

(B) The debtor fails to respond to a demand for full payment; and

(C) Offset is available.

(3) The amount of the installment payments will be set in accordance with the criteria in 4 CFR 102.11.

(d) *Commencement of collection.* (1) Except as provided in paragraph (d)(2) of this section, collection will begin after the time limits for requesting further rights stated in § 845.204(a)(6) expire or OPM has issued decisions on all timely requests for those rights and the Merit Systems Protection Board has acted on any timely appeal of a waiver denial, unless failure to make an offset would substantially prejudice the Government's ability to collect the debt; and the time before the payment is to be made does not reasonably permit the completion of the proceedings in § 845.204 or litigation. When offset begins without completion of the administrative review process, these procedures will be completed promptly, and amounts recovered by offset but later found not owed will be refunded promptly.

(2) The procedures identified in § 845.204 will not be applied when the debt is caused by a retroactive adjustment in the periodic rate of annuity or any deduction taken from annuity when the adjustment is a result of the annuitant's election of different entitlements under law, if the adjustment is made within 120 days of the effective date of the election; or interim estimated payments made before the formal determination of entitlement to annuity, if the amount is recouped from the total annuity payable on the first day of the month following the last advance payment or the date the formal determination is made, whichever is later.

#### **§ 845.206 Collection by administrative offset.**

(a) *Offset from retirement payments.* A debt may be collected in whole or in part from any lump-sum retirement payment or recurring annuity payments.

(b) *Offset from other payments—(1) Administrative offset.* (i) A debt may be offset from other payments due the debtor from other agencies in accordance with 4 CFR 102.3 except that offset

from back pay awarded under the provisions of 5 U.S.C. 5596 (and 5 CFR 550.801 *et seq.*) will be made in accordance with § 550.805(e)(2) of this chapter.

(ii) In determining whether to collect claims by means of administrative offset after the expiration of the 6-year limitation provided in 5 U.S.C. 2415, the Director or his or her designee will determine the cost effectiveness of leaving a claim unresolved for more than 6 years. This decision will be based on such factors as the amount of the debt, the cost of collection, and the likelihood of recovering the debt.

(2) *Salary offset.* When the debtor is an employee, or a member of the Armed Forces, OPM may effect collection action by offset of the debtor's pay in accordance with 5 U.S.C. 5514 and 5 CFR 550.1101 *et seq.* Due process described in § 845.204 will apply. The questions of fact and liability, and entitlements to waiver or compromise determined through that process are deemed correct and will not be amended under salary offset procedures. When the debtor did not receive a hearing on the amount of the offset under § 845.204 and requests such a hearing, one will be conducted in accordance with subpart K of part 550 of this chapter.

#### **§ 845.207 Use of consumer reporting agencies.**

(a) *Notice.* If a debtor's response to the notice described in § 845.204(a) does not result in payment in full, payment by offset, or payment in accordance with a voluntary repayment agreement or other repayment schedule acceptable to OPM, and the debtor's rights under § 845.204 have been exhausted, OPM may report the debtor to a consumer reporting agency. In addition, a debtor's failure to make subsequent payments in accordance with a repayment schedule may result in a report to a consumer reporting agency. Before making a report to a consumer reporting agency, OPM will notify the debtor in writing that—

(1) The payment is overdue;

(2) OPM intends, after 60 days, to make a report as described in paragraph (b) of this section to a consumer reporting agency;

## § 845.208

(3) The debtor's right to dispute the liability has been exhausted under § 845.204; and

(4) The debtor may suspend OPM action on referral by paying the debt in one lump sum or making payments current under a repayment schedule.

(b) *Report.* When a debtor's response to the notice described in paragraph (a) of this section fails to comply with paragraph (a)(4) of this section or the debtor does not respond, and 60 days have elapsed since the notice was mailed, OPM may report to a consumer reporting agency that an individual is responsible for an unpaid debt and provide the following information:

(1) The individual's name, address, taxpayer identification number, and any other information necessary to establish the identity of the individual;

(2) The amount, status, and history of the debt; and

(3) The fact that the debt arose in connection with the administration of FERS or CSRS.

(c) *Subsequent reports.* OPM will update its report to the consumer reporting agency whenever it has knowledge of events that substantially change the status or the amount of the liability.

## § 845.208 Referral to a collection agency.

(a) OPM retains the responsibility for resolving disputes, compromising claims, referring the debt for litigation, or suspending or terminating collection action.

(b) OPM may refer certain debts to commercial collection agencies under the following conditions:

(1) All processing required by § 845.204 has been completed before the debt is released; and

(2) A contract for collection services has been negotiated.

## § 845.209 Referral for litigation.

From time to time and in a manner consistent with the General Accounting Office's and the Justice Department's instructions, OPM will refer certain overpayments to the Justice Department for litigation. Referral for litigation will suspend processing under this subpart.

## 5 CFR Ch. I (1–1–04 Edition)

### Subpart C—Standards for Waiver of Overpayments

#### § 845.301 Conditions for waiver.

Recovery of an overpayment from the Fund may be waived pursuant to section 8470(b), of title 5, United States Code, when (a) the annuitant is without fault and (b) recovery would be against equity and good conscience. When it has been determined that the recipient of an overpayment is ineligible for waiver, the individual is nevertheless entitled to an adjustment in the recovery schedule if he or she shows that it would cause him or her financial hardship to make payment at the rate scheduled.

#### § 845.302 Fault.

A recipient of an overpayment is without fault if he or she performed no act of commission or omission that resulted in the overpayment. The fact that the Office of Personnel Management (OPM) or another agency may have been at fault in initiating an overpayment will not necessarily relieve the individual from liability.

(a) *Considerations.* Pertinent considerations in finding fault are—

(1) Whether payment resulted from the individual's incorrect but not necessarily fraudulent statement, which he or she should have known to be incorrect;

(2) Whether payment resulted from the individual's failure to disclose material facts in his or her possession, which he or she should have known to be material; or

(3) Whether he or she accepted a payment that he or she knew or should have known to be erroneous.

(b) *Mitigation factors.* The individual's age, physical and mental condition or the nature of the information supplied to him or her by OPM or a Federal agency may mitigate against finding fault if one or more of these factors contributed to his or her submission of an incorrect statement, a statement that did not disclose material facts in his or her possession, or his or her acceptance of an erroneous overpayment.

#### § 845.303 Equity and good conscience.

Recovery is against equity and good conscience when—